



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,315	04/21/2004	Joel R. Studin	SDF 04-15	5670
7590 04/03/2009				
Stuart D. Frenkel Suite 330 3975 University Drive Fairfax, VA 22030			EXAMINER SHEIKH, HUMERA N	
			ART UNIT	PAPER NUMBER
			1615	
			MAIL DATE	DELIVERY MODE
			04/03/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/829,315

**Applicant(s)**

STUDIN, JOEL R.

**Examiner**

Humera N. Sheikh

**Art Unit**

1615

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 20 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Humera N. Sheikh/  
Primary Examiner, Art Unit 1615

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's argument regarding superior results attributable to nitrocellulose are not persuasive. The secondary reference of Mantelle amply teaches use of such film-forming materials for use in topical applications. The argument that Mantelle teaches additional celluloses (i.e., HPMC) was not persuasive since the instant "comprising" claim language permits the presence of additional ingredients, including the additional celluloses of Mantelle. Applicant's arguments regarding the 1.132 Declaration with nitrocellulose being an 'improved carrier' over other celluloses have been noted. The instant claims are drawn to a 'method of treating immunological disorders'. Applicant argues transdermal effectiveness. However, a method for improving or increasing transdermal penetration is not being claimed. Assuming it was, the reference would nonetheless, meet the limitations of nitrocellulose being the film-forming carrier, based on Mantelle. Applicant has not limited the film-forming carrier to be only nitrocellulose (i.e., by using 'consisting of' language). Applicant's arguments regarding the 1.131 Declaration, Applicant's arguments were not convincing because the declaration does not present with specificity the claimed invention presently recited. Applicant's arguments that "Brandt equates nitrocellulose with other film-forming materials" was unpersuasive because the reference does not have to teach beneficial properties or results that accrue from a particular component (nitrocellulose) but merely that the prior art provide a suggestion to employ that ingredient in a similar fashion is sufficient. In this instance, Brandt recognizes use of suitable film-forming materials that include nitrocellulose. The Examiner notes that the "comprising" claim language does not exclude any additional celluloses disclosed by the art. Regarding Youssefeyeh in view of Herb, Herb discloses phenyltrimethicone and a vitamin formulated for topical applications and thus is relevant for all that it teaches. Applicant's arguments regarding Mantelle ('070) in view of Mantelle ('363) were not persuasive. The secondary Mantelle ('363) reference discloses nitrocellulose. The beneficial properties imparted by nitrocellulose would be present, as a composition and it's properties are inseparable. Regarding Mantelle ('070) in view of Herb, Herb discloses phenyltrimethicone and a vitamin formulated for topical applications and thus is sufficient to render obvious the effected claims (22 & 24). Further for the reasons advanced in the Final Office Action filed 01/23/09, Applicant's arguments were not held persuasive.